IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1794 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
BABUBHAI HARDAS MODHVADIYA & 1 - Respondents

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Appearance :
MR.K.C.SHAH, APP for Appellant
MR JAGDISH H.MEHTA FOR MR NIRAV C THAKKER for Respondents: 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 05/09/2007

ORAL JUDGMENT (Per: HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. The Appeal is admitted. Mr.Jagdish H.Mehta, learned advocate, on behalf of Mr.Nirav C.Thakker, learned

counsel, waives service of notice of admission on behalf of the respondents. In the facts and circumstances of the case, the Appeal is being finally heard today.

2. The instant Appeal under Section 378 of the Code of Criminal Procedure 1973, has been filed by the appellant – State of Gujarat, being aggrieved by the judgment and order dated 13th July, 2004, rendered by the learned Additional Sessions Judge, 8th Fast Track Court, Porbandar, in Sessions Case No.63 of 2000, whereby, both the respondents (original accused) have been acquitted of the offences punishable under Sections 498A, 306 and 114 of the Indian Penal Code.

3. Briefly stated, the case of the prosecution is that a complaint (Ex.14) came to be filed on 14th February, 2000, at Kamlabaug Police Station, Porbandar, which came to be registered as Crime Register No.I-32/2000. The complainant, Kariben, is the mother of the deceased Niruben. According to the narration in the complaint, Niruben was the wife of respondent

No.1 and respondent No.2 was her mother-in-law. The marriage of Niruben and respondent No.1 took place on 27th May, 1998, and they had a daughter named Nisha, aged about eight months, at the time of the incident. The respondent No.1 used to do agriculture work, sell milk and drive a rickshaw in order to earn his livelihood. The deceased used to stay with her husband and parents-in-law for the first year or so after her marriage. Thereafter, the deceased and her husband lived in the same house, but separately. About 15 to 20 days before the incident, the deceased and her husband started living in a separate, rented house. As per the narration in the complaint, on 9th February, 2000, at about 10:00 am, when the complainant and her younger daughter Raniben were present in the house, Niruben came there with her daughter and told them that the child had sustained a cut on her hand with a blade and that she had sent for her husband (respondent No.1) so that he could take them to the hospital for treatment of the same. At about 11:15 am, the respondent No.1 came to the house of the

complainant in his rickshaw but refused to take the deceased and their daughter to the hospital in his rickshaw, on which there was an altercation between him and the deceased. Upon Niruben asking the respondent No.1 to take her and their child home in the rickshaw, he told her to go as she had come. It is further stated in the complaint that at about 11:45 am when the complainant was at the school where she was working, her brother-in-law – Vejabhai, came on the cycle and informed her that Niruben has ended her life by burning herself. On hearing this, the complainant went to the house of the respondents, where she was informed that Niruben has been taken to the hospital. It is further stated that, after waiting there for about four hours, the complainant proceeded to the hospital where she was handed over the dead body of the deceased. The allegation in the complaint is to the effect that initially, for one year after the marriage of the deceased with the respondent No.1, she was treated well, but thereafter, her mother-in-law (respondent No.2) did not talk to her and used to taunt her by

saying that she did not know how to milk the buffaloes and that she was father-less and brother-less. It is stated that the respondent No.2 used to instigate the respondent No.1 against the deceased. The complaint further reads that when there was no food in the house of the deceased, the accused No.2 used to give food to the accused No.1 but not to the deceased and sometimes, the deceased used to take food-grains from the house of the complainant. It is further alleged therein that in the month of December of the previous year, the deceased came to the house of the complainant and had disclosed that the respondent No.1 used to beat her at the instigation of the respondent No.2, who used to inflict mental torture upon her by taunting her. Further, the narration in the complaint is to the effect that the deceased stayed at the house of the complainant for one month and it was only when a word was sent to the respondent No.1, that he came and took her back to the matrimonial home. According to the complainant, thereafter, Niruben had complained on a few occasions regarding

beatings being given to her by the respondent No.1 and the taunts inflicted on her by the respondent No.2. The complainant had comforted her by saying that she should endure this and the situation would improve later on. According to the complainant, Niruben could not tolerate the harassment meted out to her by the accused and had ended her life by pouring kerosene on her body and setting herself ablaze.

4. Upon registration of this complaint, the investigative machinery was set into motion. The statements of witnesses were recorded, inquest was held on the dead body of the deceased which was then sent for autopsy, and the Panchnama of the scene of offence was prepared. At the end of the investigation, as sufficient incriminating evidence was found against the accused, they came to be chargesheeted before the learned Judicial Magistrate, First Class, Porbandar. As the offences under Sections 498A, 306 and 114 of the Indian Penal Code were exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court

at Porbandar, where it was registered as Sessions Case No.63 of 2000. The learned Additional Sessions Judge, to whom the case was made over for trial, framed the Charge against the accused on 15th October, 2003, which is at Ex.1. The Charge was read over and explained to the accused, who pleaded "not guilty" to the same and claimed to be tried. Accordingly, they were put to trial. In order to bring home the guilt of the accused, the prosecution examined as many as seven witnesses. No defence witnesses were examined. After the recording of evidence of the prosecution witnesses was over, the learned trial Judge explained to the accused, the statements appearing against them in the evidence of the prosecution witnesses and recorded their statements under Section 313 of the Code of Criminal Procedure, 1973. Their defence was of total denial and it was stated that a false case has been thrust upon them.

5. After having appreciated and evaluated the evidence on record, the learned trial Judge recorded a finding of acquittal, having come to the conclusion that

there was no evidence on record to prove that the deceased committed suicide as a result of cruel treatment meted out to her by the accused, which has given rise to the present Appeal.

6. We have heard Mr.K.C.Shah, learned Additional Public Prosecutor for the appellant and Mr.Jagdish H.Mehta, learned advocate on behalf of Mr.Nirav C.Thakker, learned counsel for the respondents, at length and in great detail. We have also perused minutely, the Record and Proceedings of the case which has been summoned by us from the trial Court.

7. Mr.K.C.Shah, learned Additional Public Prosecutor, has submitted that the complaint and the evidence on record, especially the testimony of Raniben at Ex.15, fully supports the case of the prosecution and that the trial Court has not properly appreciated the same. According to the learned Additional Public Prosecutor, the evidence on record is sufficient to bring home the guilt of the accused and the trial Court has wrongly recorded a finding of acquittal. He

has prayed that the reasons given by the trial Court for acquittal being neither cogent nor reasonable, the Appeal may be allowed and the order of acquittal set aside.

8. On the other hand, Mr.Jagdish H.Mehta, learned advocate for the respondents, has urged that the trial Court has rightly appreciated the evidence on record and the reasons recorded by the trial Court for acquittal are reasonable and cogent. Further, this being an Appeal against an order of acquittal, the judgment and order rendered by the learned trial Judge deserves to be upheld as proper and plausible reasons for acquittal have been recorded. He has, therefore, prayed that the Appeal be dismissed.

9. In this background, having perused the contents of the complaint as referred to hereinabove and considering the submissions of the parties, it is necessary to evaluate and re-appreciate the evidence recorded by the trial Court and the reasons assigned for acquittal, by briefly summarizing the salient and vital features of the depositions of the prosecution

witnesses and other evidence on record.

10. Prosecution Witness No.1, Kariben, who is the complainant and the mother of the deceased Niruben, is examined at Ex.13. In her examination-in-chief, she has stated that when the unfortunate incident took place, Niruben was staying separately with her husband in a rented house. She has specifically stated that whenever the deceased used to visit their house, she never complained of any torture or cruelty being meted out to her and that she has never come to stay at her house in annoyance at the behaviour of her husband or in-laws. Kariben has categorically stated that she has no knowledge why, and in what manner, her daughter died but only knows that she was informed by her brother-in-law that Niruben had burnt herself. This witness has reiterated that the deceased Niruben had never disclosed to her about being harassed or ill-treated by the respondents. In cross-examination, PW 1 states that on receiving the news about Niruben having burnt herself, she had gone to the house of the respondents and from there, she went to the

hospital where all their relatives were present. She has stated that the family of the respondents performed the last rites of Niruben and relatives and others who came to condole the death of Niruben, visited the house of the respondents as well as of the complainant. This witness has categorically admitted that after the death of Niruben, when her statement was taken by the Police, she had not stated that Niruben was subjected to cruelty by the respondents. This witness has admitted that the complaint was filed five days after the death of Niruben and during those five days, relatives and other persons visited her house as well as the house of the respondents. She has also categorically admitted that before filing the complaint, she had never told to anybody that Niruben was subjected to cruelty by the respondents. It further transpires from the testimony of this witness that the complainant never went to the Police Station to file the complaint but the same was given by her daughter Raniben to the Police, who brought the complaint to the house of the complainant, for appending her signature thereupon.

This witness states that after the deceased and her husband started staying separately, Niruben used to visit her house frequently. From the testimony of this witness, it is also evident that the respondents are related to the family of the complainant.

11. Prosecution Witness No.2, Raniben Devabhai Keshwala, whose testimony is at Ex.15, is the sister of deceased Niruben. According to this witness, the deceased and the respondent No.1 were married about five to six years ago and had a daughter. This witness states that initially the deceased did not face any problem but thereafter, some quarrels used to take place and when the deceased used to visit their house, she used to tell her mother about the quarrels with her husband and mother-in-law and her mother used to tell her to endure the same. This witness further states that the respondent No.1 used to drive a rickshaw and one day before the incident, Niruben had come to their house with her daughter and asked the respondent No.1 to come there and take the child to the doctor to treat the cut on her hand but her husband had refused, saying that she should go

alone. PW 2 further goes on to narrate that the respondent No.1 came to their house after some time and on Niruben asking him why he had come, he replied that she should not have come alone. Thereafter, when the deceased was standing near the rickshaw, there was an altercation between husband and wife. This witness states that at that time, she was inside the house, doing household work. Thereafter, the respondent No.1 went away in the rickshaw and Niruben went to her home without taking food and after some time, they were informed by Vejabhai that she had burnt herself. In her cross-examination, Raniben has categorically stated that whenever the deceased used to come to their house, she never told her mother or her that her husband or mother-in-law were harassing her or treating her with cruelty. In fact, according to this witness, the deceased used to say that she had no problem in her matrimonial house. This witness specifically states that the deceased Niruben was of a very sensitive temperament and was very attached to her husband (respondent No.1) and her daughter. According to

this witness, the only incident that took place was that the respondent No.1 did not take Niruben and their daughter in the rickshaw to the doctor to get the cut on the hand of the child treated and, being annoyed with this, there was an altercation between the husband and wife and thereafter nothing further occurred. This witness has also clarified that the accused No.1 had refused to go to the doctor because he felt that the cut on the hand of the child was a very minor one which could be treated at home. It has further emerged from the testimony of this witness that the deceased and the respondent No.1 had gone to stay separately from her in-laws and there was no ill feeling between the deceased and her parents in-law regarding this. PW Raniben further states that the last rites of the deceased were performed by the family of the respondents and they were all present there on that occasion. In her cross-examination, this witness has clearly stated that Niruben was not subjected to any torture or cruelty at the hands of the respondents and that the complaint was taken in her presence by the Police

who had come to their house for recording the same. PW 2 Raniben goes on to state that she had gone to the Police Station and had given the complaint but since she was not an adult, the Police did not permit her to sign the same and they had come to the house of the complainant where the complaint was signed by her mother, Kariben.

12. Prosecution Witness No.3, Deviben, is the aunt (Mami) of the deceased, whose evidence is to be found at Ex.16. This witness categorically states that she has no knowledge why Niruben burnt herself to death and even afterwards, she has not come to know anything about the incident. She has stated that she had stayed in the house of the complainant for eleven days after Niruben's death and does not know anything regarding the same. This witness has also stated that the deceased and the respondent No.1 used to stay separately and that there was an atmosphere of grief in the house of the respondents.

13. Prosecution Witness No.4, Shaileshbhai Mangalbhai Katara, is a Police witness who has been examined at

Ex.17. He has directed the registration of the complaint and investigation on the basis of the same. In his cross-examination, this witness clearly states that in the complaint, the complainant has not stated anything regarding the cruelty or torture meted out to the deceased by her in-laws. He has also stated that the incident took place on 9th February, 2000, whereas the complaint was given on 14th February, 2000 and that the complaint was taken by him at the house of the complainant.

14. Prosecution Witness No.5, Gambhirsinh Natubha Jhala, who was serving as PSI at Kamlabaug Police Station at the relevant time, has deposed at Ex.25 to the effect that he had prepared the Inquest Panchnama of the deceased. From the evidence of this witness, it does not transpire that there was any history of cruelty or torture meted out to the deceased.

15. The evidence of other Police witness, PW 6, Chaganbhai Ramabhai, whose testimony is at Ex.42, also does not disclose anything fruitful.

16. Dr.Navinbhai Veljibhai Dhamecha, who performed the post-mortem on the body of the deceased, has been examined at Ex.7. The cause of death, recorded in the post-mortem report at Ex.9, is “shock due to cardio-respiratory failure due to extensive burns all over body”.

This, in essence, is all the evidence adduced by the prosecution.

17. It is not disputed that Niruben committed suicide by pouring kerosene over her body and setting herself ablaze. We shall now proceed to re-appreciate the evidence on record in order to ascertain whether the respondents had instigated the deceased to commit suicide by inflicting cruelty upon her. To this end, we have carefully scrutinized the original Record and Proceedings summoned from the trial Court and have perused the testimony of the witnesses and examined the reasons for acquittal recorded by the trial Court, in the light of the evidence on record. On re-appreciation of the evidence and after considering the vital features of the case as well as reasonable

probabilities arising out of the circumstances of the case, we are of the considered view that the judgment and order of the trial Court does not suffer from any infirmity so as to warrant any interference.

18. The case of the prosecution rests mainly upon the narration in the complaint as well as the testimony of PW 2, Raniben. A perusal of the contents of the complaint, which have been discussed in detail hereinabove, make it evident that general allegations have been made against the accused persons by the complainant to the effect that the deceased was subjected to cruelty and mental torture due to which she was driven to commit suicide. In juxtaposition, the evidence of the complainant, who has been examined as PW 1 at Ex.13, reveals that she has not supported the statements made by her in the complaint but has deposed to the contrary. In her testimony, the complainant, Kariben, has categorically stated that her deceased daughter Niruben never complained of any torture or harassment at the hands of the respondents and that she has no knowledge why Niruben has committed

suicide. This version of Kariben has remained unshattered even in the cross-examination of this witness. It is evident from the deposition of this witness that the complaint was given at the behest of her daughter Raniben and she had put her signature upon it when the Police came to her house. It is also clear from the testimony of PW Kariben that Niruben used to visit her house frequently and she never complained regarding any ill-treatment or harassment by the respondents. The testimony of this witness does not lend support to the statements made by her in the complaint and is, in fact, diametrically contradictory. Even though this witness has not been declared hostile, the case of the prosecution does not derive any support from her testimony but is considerably weakened by the same. Although some general allegations of cruelty have been made in the complaint, no specific incident or event has been pointed out. Neither is there anything on record which will show that the conduct of the respondents towards Niruben was so cruel or that the torture inflicted upon her was of such an extent that

she was driven to end her life.

19. As far as the testimony of PW 2, Raniben (Ex.15), is concerned she has tried to insinuate that there was an altercation between the deceased and the respondent No.1 because the latter had refused to take her and their daughter to the doctor to treat the cut sustained by the child on her finger with a blade. This witness has also tried to introduce a story that initially the deceased did not have any problem in her matrimonial home but later on, some quarrels used to take place. However, this version is shattered in her cross-examination wherein she categorically admits that the deceased was annoyed because her husband had refused to accompany her to the doctor and had stated that the cut on the child's finger was too minor and could be treated at home. PW Raniben further admits that her sister, i.e. deceased Niruben was of an extremely sensitive nature and was very attached to her husband (respondent No.1) and her daughter. This witness has also admitted that the deceased has not complained to her mother or to herself about any ill treatment or harassment being

meted out to her on the occasions when she visited their house. The evidence of PW Raniben and PW Kariben (complainant) makes it clear that the last rites of the deceased were performed at the house of her in-laws and that they, too, were present till the end. It is also clear that the relatives of the deceased came to the houses of both the complainant and the respondents to express grief at the death of Niruben. The version which has emerged from the testimony of PW Kariben that the complaint was recorded at the behest of PW Raniben, is also supported by the testimony of Raniben who says that she had gone to the Police Station and given the complaint but, since she had not completed 18 years of age, her signature was not taken and the Police went to her home and asked her mother to append her signature on the same. There is also no disputing the fact that the incident took place on 9th February, 2000 and the complaint was registered on 14th February, 2000, i.e. after five days. Had the factum of cruelty, torture and harassment to the deceased at the hands of the respondents been in the knowledge of the

complainant, it is but natural that she, who is the mother of the deceased, would have lost no time in giving the complaint. This gives rise to an apprehension that the filing of the complaint is an afterthought. Moreover, the complainant has narrated a different story in the complaint and has deposed to the contrary. She has specifically denied that Niruben was subjected to any harassment or cruelty by the respondents. This belies the version narrated in the complaint, which, as it transpired, was recorded at the behest of Raniben and that, too, after five days of the incident.

20. The prosecution has not examined any independent witnesses, such as the neighbours of Niruben or her in-laws, regarding the alleged harassment to the deceased. The evidence of PW Kariben and PW Raniben does not reveal that Niruben was harassed or treated with cruelty by the respondents.

21. A scrutiny of the entire evidence reveals that there is not even an iota of evidence to the effect that the respondents had, by their acts or omissions or by any

continued course of conduct, created such circumstances or caused such a degree of harassment that the deceased was left with no other option but to commit suicide. In fact, no incidents of torture, cruelty or harassment have been described by any of the prosecution witnesses. The minor altercation between the deceased and the respondent No.1 regarding his refusal to take Niruben and their daughter to the doctor is not of such a serious nature so as to drive the deceased to commit suicide. It is but a minor altercation between husband and wife which is not unusual or unnatural in the context of domestic life. It does not reveal that the respondent No.1 treated the deceased with cruelty or caused her harassment. What transpired in the mind of the deceased which led to the unfortunate event cannot be ascertained. According to Raniben, Niruben was possessed of a very sensitive temperament and it is most likely that she took the extreme step in a fit of emotion and anger after the altercation with her husband. It is also clear from the evidence that she was very much attached to her husband and

daughter. Whatever may have been the reason for taking her life, the evidence on record does not, in any manner, point towards any role played by the respondents, to drive her to this unfortunate end. The alleged harassment referred to in the complaint is not supported by the evidence on record. In fact, the complainant and PW Raniben have themselves admitted that the deceased never used to complain of any cruelty or harassment by the respondents in the matrimonial house.

22. For the prosecution to bring home the charge under Section 498A of the Indian Penal Code, it has to be proved that the woman is subjected to `cruelty' which has been defined to mean “any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman...”. In the case on hand, there is not an iota of evidence that the respondents subjected the deceased to cruelty of the nature as described above. In fact, the evidence is to the contrary.

23. Similarly, for the prosecution to prove the charge under Section 306 of the Indian Penal Code, there must be evidence on record to show that soon before the incident there was harassment of an incessant, persistent and unbearable nature to the deceased at the hands of the accused persons which could have led the deceased to commit suicide. Section 107 of the Indian Penal Code deals with abetment and in order to constitute this offence, the following ingredients, namely (a) instigation to commit the offence, (b) engaging in conspiracy to commit the offence and, (c) aiding the commission of the offence, have to be present. It, therefore, necessarily follows that there should have been some active suggestion or support from the accused persons to the deceased for the commission of the offence by their acts or omissions or some kind of instigation or provocation. In **Ramesh Kumar v. State of Chhattisgarh – (2001) 9 SCC 618**, `instigation' has been described as under:

> *"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the*

requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

Applying the principles laid down by the Supreme Court to the facts of the present case, and in the light of the evidence on record, it cannot be concluded that the respondents had, by their acts or omissions or by any continued course of conduct, abetted the suicide of the deceased.

24. Lastly, it has to be kept in mind that this is an Appeal against acquittal and unless the reasons assigned by the trial Court are perverse, legally unsustainable or highly improbable, the Court would be slow to interfere with the order of acquittal. In

the instant Appeal, we find that the reasons given by the trial Court are plausible, cogent and convincing. Therefore, in our considered view, there is no infirmity in the reasons assigned by the learned trial Judge for recording a finding of acquittal.

25. In the ultimate analysis, we do not find any valid or justifiable ground to disturb the judgment and order of the trial Court, acquitting the accused. For the foregoing reasons, the Appeal is dismissed.

(J.R.Vora, J.)

(Smt.Abhilasha Kumari, J.)

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